



Montana Legislative History

Chapter: 160 Session L: 1981 **Checklist of Bill History**

Bill Number: House / Senate

HB324

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



House	Senate
Committee: Select Committee on Water	Committee: Agriculture
Hearing Date(s): 1/27 and 2/3	Hearing Date(s): No minutes available -
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SG

Date: 10-17-23

Notes:

HEARING: 3/13
REPORT: 3/16, BE CONCURRED IN, STATEMENT OF INTENT AMENDED
2ND READING: 3/18, YEAS: 23; NAYS: 16
3RD READING: 3/20, YEAS: 37; NAYS: 11

RETURNED TO HOUSE WITH AMENDMENTS: 3/20
2ND READING: 4/8, YEAS: 90; NAYS: 0
3RD READING: 4/9, YEAS: 94; NAYS: 0

TRANSMITTED TO GOVERNOR: 4/13
ACTION: SIGNED, 4/18
CHAPTER 424

HB 322—MEYER—TO PERMIT THE APPORTIONMENT OF HIGHWAY FUNDS BASED ON THE AMOUNT AVAILABLE FOR OBLIGATION AND TO CHANGE THE DATE WHEN INFORMATION CONCERNING ALLOCATIONS MUST BE FURNISHED TO THE COUNTY COMMISSIONERS.

INTRODUCED: 1/19
REFERRED TO COMMITTEE ON HIGHWAYS: 1/19
HEARING: 1/27
REPORT: DO PASS AND PLACE ON CONSENT CALENDAR: 1/29
3RD READING: 3/2 YEAS: 98; NAYS: 0

TRANSMITTED TO SENATE: 2/3
REFERRED TO COMMITTEE ON HIGHWAYS AND TRANSPORTATION: 2/4
HEARING: 2/12
REPORT: 2/12, BE CONCURRED IN
2ND READING: 2/16, BE CONCURRED IN
3RD READING: 2/17, YEAS: 50

RETURNED TO HOUSE: 2/17
TRANSMITTED TO GOVERNOR: 2/24
ACTION: SIGNED, 2/26
CHAPTER 22

HB 323—BUENNEKENS, DOZIER, HARRINGTON, ET AL—TO FURTHER LIMIT THE NUMBER OF NONRESIDENT BIG GAME COMBINATION LICENSES SOLD IN A LICENSE YEAR.

FISCAL NOTE: REQUIRED
INTRODUCED: 1/19
REFERRED TO COMMITTEE ON FISH AND GAME: 1/19
HEARING: 1/27
REPORT: DO NOT PASS, 2/10
REPORT: ADOPTED, 2/13
BILL KILLED: 2/13 YEAS: 66; NAYS: 26

HB 324—BURNETT, MC LANE, BOTH—TO EXCEPT FROM THE WATER APPROPRIATION PERMIT PROCESS THE REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN IMPOUNDMENT OR PIT....

INTRODUCED: 1/19
REFERRED TO SELECT COMMITTEE ON WATER: 1/19
HEARING: 1/27
EXECUTIVE SESSION: 2/3
REPORT: DO PASS AS AMENDED, 2/6
2ND READING: 2/11 YEAS: 86; NAYS: 8
3RD READING: 2/13 YEAS: 87; NAYS: 8

TRANSMITTED TO SENATE: 2/13
REFERRED TO COMMITTEE ON AGRICULTURE: 2/14
HEARING: 3/4

REPORT: 3/5, BE CONCURRED IN
2ND READING: 3/7, BE CONCURRED IN
ON MOTION, 3/9, TAKEN FROM 3RD READING AND PLACED BACK ON 2ND
READING

2ND READING: 3/11, BE CONCURRED IN, AS AMENDED
3RD READING: 3/13, YEAS: 47; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/13

2ND READING: 3/18 YEAS: 86; NAYS: 4

3RD READING: 3/20 YEAS: 90; NAYS: 2

TRANSMITTED TO GOVERNOR: 3/25

ACTION: SIGNED, 3/26

CHAPTER 160

HB 325—DOZIER—TO INCREASE THE AMOUNT OF MOTOR VEHICLE LICENSE FEE
COLLECTIONS PAID INTO THE CITY ROAD FUND.

INTRODUCED: 1/19

REFERRED TO COMMITTEE ON TAXATION: 1/19

HEARING: 1/28

REPORT: DO NOT PASS, 1/31

REPORT: ADOPTED, 2/2

BILL KILLED: 2/2 YEAS: 69; NAYS: 28

HB 326—DOZIER—SUBJECTING AIRCRAFT KEPT AT AN AIRPORT LOCATED WITHIN A
CITY TO SCHOOL DISTRICT AND CITY TAX LEVIES AND EXEMPTING THEM FROM
COUNTY TAX LEVIES.

INTRODUCED: 1/19

REFERRED TO COMMITTEE ON TAXATION: 1/19

HEARING: 1/28

REPORT: DO PASS AS AMENDED, 1/31

2ND READING: 2/5 YEAS: 42; NAYS: 55

SUBSTITUTE MOTION, 2/5, DO NOT PASS YEAS: 56; NAYS: 40

BILL KILLED ON 2ND READING: 2/5

HB 327—KANDUCH, SEIFERT, KROPP—TO SUBMIT TO THE QUALIFIED ELECTORS OF
MONTANA AN AMENDMENT TO THE MONTANA CONSTITUTION INCREASING THE
NUMBER OF QUALIFIED ELECTORS WHO MUST SIGN AN INITIATIVE PETITION AND
AUTHORIZING THE LEGISLATURE TO LIMIT THE NUMBER OF INITIATIVES THAT
MAY APPEAR ON THE BALLOT....

INTRODUCED: 1/19

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/19

HEARING: 2/9

BILL DIED IN COMMITTEE

HB 328—KANDUCH, PAVLOVICH, KROPP—TO SUBMIT TO THE QUALIFIED ELECTORS
OF MONTANA AN AMENDMENT TO THE MONTANA CONSTITUTION TO PROVIDE THAT
THE LEGISLATURE MAY LIMIT THE NUMBER OF INITIATIVES WHICH MAY APPEAR
ON THE BALLOT.

INTRODUCED: 1/19

REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 1/19

HEARING: 1/29

REPORT: DO NOT PASS, 2/2

REPORT: ADOPTED, 2/3

BILL KILLED: 2/3 YEAS: 85; NAYS: 5

HB 329—KANDUCH, PAVLOVICH, KROPP—TO GENERALLY REVISE THE PROCEDURE FOR
OBTAINING AN ECONOMIC IMPACT STATEMENT....

FISCAL NOTE: REQUIRED

INTRODUCED: 1/19

HOUSE BILL NO. 324

INTRODUCED BY BURNETT, McLANE, ROTH

IN THE HOUSE

January 19, 1981	Introduced and referred to Committee on Water.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, do pass.
February 12, 1981	Correctly engrossed.
February 13, 1981	Third reading, passed. Ayes, 87; Noes, 8. Transmitted to Senate.

IN THE SENATE

February 14, 1981	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
March 5, 1981	Committee recommend bill be concurred in. Report adopted.
March 7, 1981	Second reading, concurred in.
March 10, 1981	On motion taken from third reading and referred to second reading. Motion adopted.
March 11, 1981	Second reading, concurred in as amended.
March 13, 1981	Third reading, concurred in as amended. Ayes, 47; Noes, 0.

IN THE HOUSE

March 14, 1981

Returned from Senate with amendments.

March 18, 1981

Second reading, amendments concurred in.

March 20, 1981

Third reading, amendments concurred in. Ayes, 90; Noes, 2. Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. 324

INTRODUCED BY Burnett Mc Lane Roth

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 85-2-306, MCA, TO EXCEPT FROM THE WATER APPROPRIATION PERMIT PROCESS THE REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN IMPOUNDMENT OR PIT AND APPROPRIATING WATER FOR USE BY LIVESTOCK REGARDLESS OF THE SIZE OF THE IMPOUNDMENT IF THE SOURCE OF WATER IS OTHER THAN A PERENNIAL FLOWING STREAM."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county

where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if ~~the maximum capacity of the impoundment or pit is less than 15 acre-feet and~~ the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before ~~after~~ constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(3) A person may also appropriate water without applying for or prior to receiving a permit under rules

-2- INTRODUCED BILL
HB 324

LC 0893/01

1 adopted by the board under 85-2-113."

-End-

Approved by the
Select Committee on Water

HOUSE BILL NO. 324

INTRODUCED BY BURNETT, McLANE, ROTH

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1 pit and ~~issue~~ MAY THEN MAKE the permit subject to such
2 terms, conditions, restrictions, or limitations it considers
3 necessary to protect the rights of other appropriators.

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5 applying for or prior to receiving a permit under rules
6 adopted by the board under 85-2-113."

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
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6 PROCESS THE REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR
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10 FLOWING STREAM."

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-End-

March 11, 1981

SENATE COMMITTEE OF THE WHOLE

Proposed amendments to House Bill 324, reference copy, as follows:

1. Title, lines 8 and 9.

Following: "LIVESTOCK"

Strike: "REGARDLESS OF THE SIZE OF THE IMPOUNDMENT"

MINUTES OF THE SELECT COMMITTEE ON WATER
February 3, 1981

The Select Committee on Water convened on Tuesday, February 3, 1981 in Room 436 of the Capitol at 2 p.m. with CHAIRMAN AUDREY ROTH presiding. All members were present, with the exception of REPRESENTATIVE BRIGGS.

The continuation of HB 194 was opened by REP. ELLISON. He suggested amending the bill as follows: On line 6 (part of the title), strike: "REPEAL OR", and on line 12, strike: "or repeal", line 15, strike: "repeal or". He offered these amendments in response to John Scully's request from the previous hearing of the bill on January 27, 1981.

PROPOSERS FOR THE AMENDMENTS

PETER JACKSON, representing Western Environmental Trade Association, said that he approved of the suggested amendments.

OPPOSERS FOR THE AMENDMENTS

There were none.

PROPOSERS FOR THE BILL

None gave testimony.

OPPOSERS: ELLEN DITZLER of the Montana Environmental Information Center testified in opposition to the bill. (EXHIBIT I). ABE HARPESTAD, representing the Department of Environmental Science (DES) stated the bill expresses a lack of trust in legislative judgment. He also feels it is a duplication of effort. PAT OSBORNE of the Northern Plains Resource Council doesn't feel HB 194 addresses the problems that occurred during the Yellowstone water controversy.

QUESTIONS FROM THE COMMITTEE:

REP. CURTISS asked if the board left unappropriated water in both the Upper and Lower Yellowstone. LEO BERRY of the DNRC replied "yes." REP. CURTISS asked if someone was present who could speak on the subject. GARY FRITZ, also of the DNRC, said there is more water in the stream left unappropriated than has been reserved. He said the reservation has been changed and feels there is adequate water in 8 out of 10 years. REP. CURTISS said that in the public hearings, it seemed that there wasn't enough and that, under the permit system, "junior users" were getting more water than "senior users." GARY FRITZ (DNRC) said that, in 8 out of 10 years, there is enough water. Most Conservation Districts would disagree with that, he said. REP. CONROY asked about the "modification" part of the bill. He wondered if it might do the opposite of the sponsor's intention. REP. ELLISON said there was some weakness in that part of the bill,

but that there was the right of appeal in the courts. REP. THOFT asked if REP. ELLISON would still like the bill, sometime in the future when conditions were not as favorable. REP. ELLISON said the option of appealing through the courts should address complaints. He said that one hearing may have already taken place. REP. THOFT asked what one would do if the board didn't respond favorably. REP. ELLISON again said to appeal. REP. ASAY asked if there was a procedure at this time for the legislature to review the application. GARY FRITZ and LEO BERRY said there was presently no review. REP. THOFT asked if a bill could be introduced to override the action of the board. LEO BERRY said that was a difficult question to answer as it is a very complex legal issue as to whether or not a property right has been delegated to the Conservation Districts. He didn't know if the legislature could come in and reallocate the reservations the board had made. That issue has never been adjudicated. REP. KEMMIS wonders how this bill could improve anything about the Yellowstone situation. REP. ELLISON commented that some of the cities were unhappy about that as well as the agricultural community. He feels this bill will allow review and provide a system of checks and balances. REP. ROTH pointed out that Section 85-23-16 provides for strict guidelines to follow in reserving water. REP. KEMMIS said these reservations were drawn up after a great deal of study. He doesn't feel the legislature would be as knowledgeable as those who drew up the reservations. REP. ELLISON feels the legislative review process would work now and for the future when the needs would probably be different. REP. KEMMIS asked if a reservation of a Conservation District could be converted into a diversionary right. GARY FRITZ said the board could modify or revoke a reservation only if it could show that the water has not been put to use in the intended manner. He also pointed out the difference between a water permit and a reservation. REP. KEMMIS asked if a bank is likely to grant a loan to a Conservation District that has only a provisional water right. REP. ELLISON said that is all that is available.

REP. THOFT asked if the bill would delay a project needing money because of having to wait for the legislature to convene. LEO BERRY said it could.

REP. ELLISON closed the hearing on HB 194.

SB 59

SENATOR STEVE BROWN, of Helena, opened the hearing on the bill. He stated that the bill was originally referred to the Senate Agriculture Committee. The present law permits a stock owner to dig a pit of 15 acre feet or smaller. His parents encountered a situation where a pit was built on adjoining property and then asked for a permit, saying it was to be used for stock watering

purposes. It later became apparent that it was for recreational uses, primarily as a duck hunting pond. Subsequently, it was leased to an individual who wanted to mine for sand and gravel. He dug a trench about 18' deep and about 10' wide along the boundary of his parents' property. Previous to this, the Browns had experienced a high water table and had constructed a drain ditch so that it could become usable pasture; but now, with the adjoining trench, water is reappearing on their property. It is felt that the pit may have disturbed the ground water aquifers and may cause a long-term problem. He feels that this may occur in other instances and, for this reason, is introducing SB 59 which requires that a permit be first obtained before a pit is built. (EXHIBIT II) He feels that small parcels of land are especially likely to encounter problems of this type. SEN. BROWN said agricultural groups favor the bill and the Senate passed the bill with only one no vote.

PROPONENTS:

There were none.

OPPONENTS:

There were none.

EXECUTIVE SESSION

HB 324. REP. BURNETT said he felt the two bills just heard could be combined. He suggested that the SCS should be available to engineer a project, such as SEN. BROWN discussed in the hearing on SB 59. REP. CONROY asked LEO BERRY if he thought the two bills could be combined. LEO BERRY said he didn't feel they were compatible, but felt they expressed opposite intents. Further discussion of HB 324 was postponed at this time.

HB 269. REP. McLANE read her proposed amendments to HB 269. (EXHIBIT III) She then moved the amendments be accepted. REP. HUENNEKENS suggested that the amendments be addressed one at a time. REP. McLANE moved that Amendment 1 be accepted by the committee; it was seconded and PASSED UNANIMOUSLY. She moved that Amendment 2 be accepted by the committee; it was seconded and PASSED UNANIMOUSLY, as were Amendments 3 and 4. REP. McLANE moved that HB 269 DO PASS AS AMENDED. The motion was seconded and passed UNANIMOUSLY.

HB 324. HB 324 was again brought up for action by the committee. After the committee took a moment to study the proposed amendments (EXHIBIT IV), REP. CONROY, referring to page 2, asked about revocation of a water permit. LEO BERRY said the only time the permit would be revoked would be if the pit was interfering

with some other water right. REP. CURTISS asked for Legislative Researcher BOB PERSON to read MCA 85-2-113 for the committee. Bob read it and explained that it outlines the general duties and powers of the Board. REP. KEMMIS asked if the first section provides for the granting of a provisional permit. Leo Berry said it makes provision for provisional permits. They are subject to final determination. He felt this bill would not apply only to small impoundments, but to any water permit. He said all permits are provisional until a hearing is held to determine if there will be any adverse effects of other water rights. In this bill, there is an attempt to change that law by exempting stock ponds of 15 acre feet or less, but not to stop the appeal process. Ninety percent of the applications are not objectionable, he said. REP. KEMMIS asked if anyone could go to court, not just one who wants a 15 acre-foot impoundment. FRITZ thought that the language applied only to the small stock pond, but thought it should be researched. REP. HUENNEKENS felt the small stock ponds had been reinserted when the intent was to exempt them. LEO BERRY said he felt the bill, as it was written, would definitely conflict with SB 59, and that is why he came up with the amendments. The intent is for a person to get a permit as quickly as possible, he stated, so that the SCS can help with the engineering of the project. REP. KEMMIS asked if a provision couldn't be written to have the permit remain provisional, until a time has elapsed to have others raise objections. FRITZ said the time frame was left open to allow objections at any time that adverse effects were determined. Most nearby property owners would discover adverse effects right away, he said. REP. THOFT said that in his part of Montana, stock ponds are affecting the water rights of others, and asked if FRITZ thought he had a legitimate concern. FRITZ said that is also Senator Brown's concern and the reason SB 59 was introduced. FRITZ explained that HB 324 would allow the building of a 15 acre-feet pond and the permit being issued promptly. He stated that Senator Brown's bill adds one more stipulation: If your land holdings are less than 40 acres in size, you have to have a permit before you start the stock pond. He felt that to fully address the problem, a statute would have to require a permit for each and every pond, which he didn't think was necessary. REP. CONROY moved the amendments be passed. REP. KEMMIS expressed concern about the amendment dealing with the rights of others. REP. HUENNEKENS felt the amendments in Section 2 amending 85-2-314 specifically dealt with that problem. CHAIRMAN ROTH asked if the committee thought that might present a continual problem. REP. KEMMIS felt it would and suggested that the

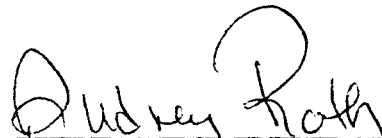
SCS be contacted for an opinion. He suggested striking the suggested amendment to 85-2-314.

The amendment's motion was seconded and PASSED.

REP. CONROY moved DO NOT PASS AS AMENDED.

It was seconded and PASSED.

The meeting was adjourned at 2:40 p.m.

A handwritten signature in cursive script, reading "Audrey Roth". The signature is written in dark ink and is positioned above a horizontal line.

AUDREY ROTH, CHAIRMAN

rj

VISITORS' REGISTER

HOUSE

Water

COMMITTEE

A/B 194

Date 2-3-81

OR _____

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE

COMMITTEE

Date _____

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

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The Montana Environmental Information Center

• P.O. Box 1184, Helena, Montana 59601 (406) 443-2520
• P.O. Box 8166, Missoula, Montana 59801 (406) 728-2644

TESTIMONY BEFORE THE HOUSE WATER COMMITTEE REGARDING HB 194
February 3, 1981

Madame Chairman, members of the Committee, I am Ellen Ditzler. I speak on behalf of the Montana Environmental Information Center, a statewide public interest group with over 1300 members.

Our testimony on HB 194 addresses two simple points: sensible government and a balanced approach to economic development in Montana. Both policies are presently embodied in the Water Use Act and the water reservation process.

The first point - sensible government - has been addressed by others who have testified. Further conditions on water reservations would largely duplicate a process that is extensive, lengthy, largely scientific and legal, and already has the policy guidance of the Legislature. HB 194 would add another layer of government on water reservations and a tremendous layer of work on legislators.

At best, the Legislature could find the time and resources to evolve an independent body of data on which to base its decisions on water allocation. At worst, making a water reservation provisional and subject to change or repeal could be a bit like writing the rules, letting the teams play out the game, yet holding open the option to, in the end, change the score.

More importantly, HB 194 could undermine the opportunity for economic development in Montana's agricultural, municipal and recreation sectors.

The Water Use Act and reservation system are policies of growth which allow Montana to protect and expand its economies without access to water resources being a limiting factor to development. A water reservation is a water right, but differs in that it is an appropriation that doesn't require the immediate application of water to a beneficial use, but guarantees that water right for future use.

To illustrate this point, I quote Professor Al Stone of the University of Montana Law School and an expert on water law. In this case, Professor Stone refers to the potential development of a municipal water reservation, such as in Billings.

"A city ought to be able to obtain a water right for something in excess of what it is using right now so as to provide for future growth...That certainty is one of the

purposes of a (water) reservation."*

The same can apply to a conservation district that wishes to have some guarantee regarding water rights for future expansion.

If HB 194 were in effect, that certainty could be weakened and delayed as much as 20 months. Holders of a "provisional" reservation (e.g. a conservation district) would not know for 20 months if they can proceed to expand their irrigation operations until their reservation is finalized - or even modified or repealed by the subsequent session of the Legislature. This could cause delay and insecurity for those who wish to begin preliminary work, such as applying for bank loans, on using reserved water.

Because of its possible effects on water rights, economic development and the realistic limitations of time and work in the Legislature, we respectfully ask that the committee recommend a DO NOT PASS on HB 194. Thank you for considering our comments.

Respectfully submitted,

Ellen Ditzler
Staff, Montana Environmental Information Center

*from the minutes of the legislative subcommittee on Water Rights, July 8 & 9, 1977.



LAURENCE ADAMS LAMSON © 1976

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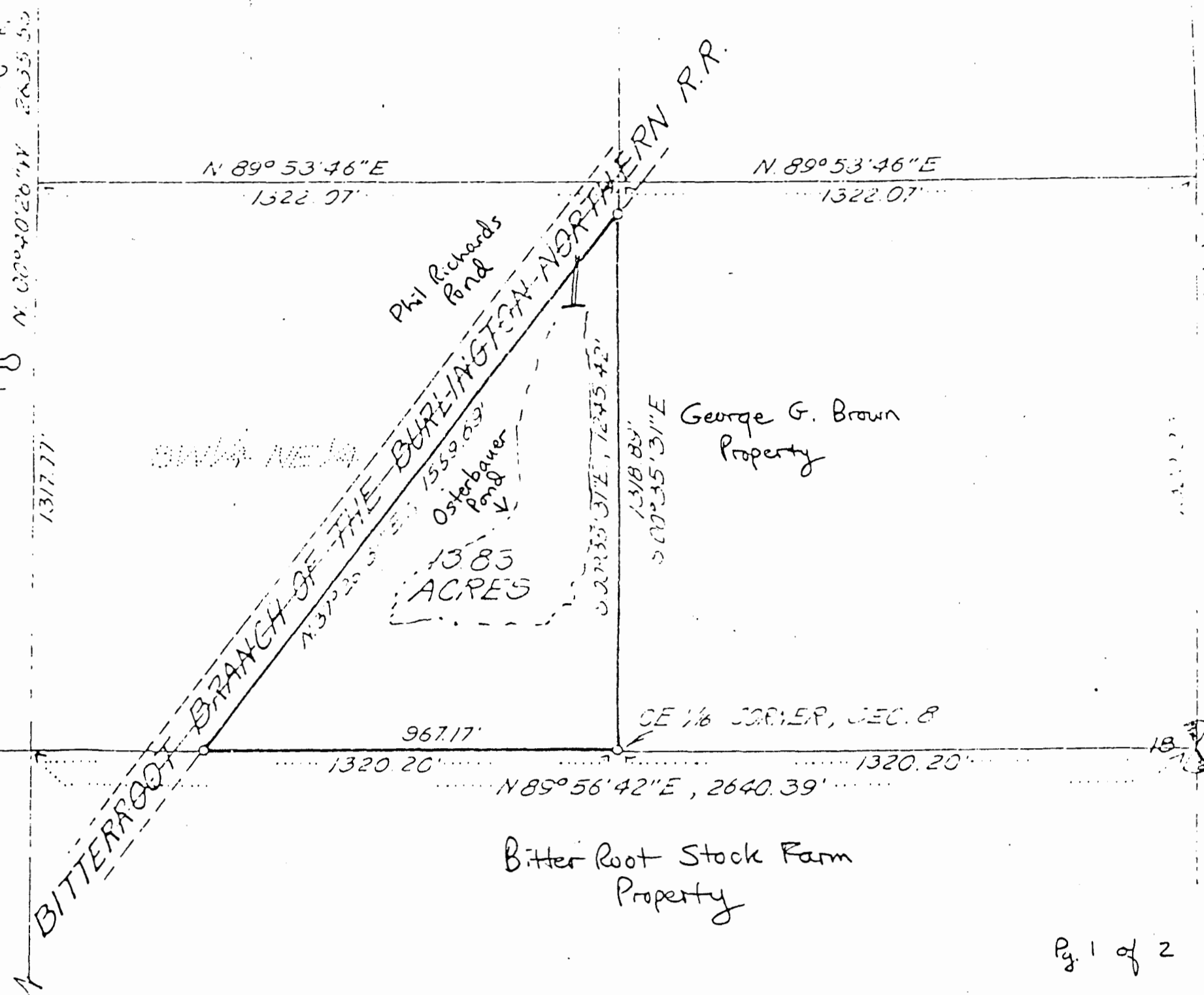
Ellen Ditzler
Staff, Montana Environmental Information Center

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1/4 CORNER OF SECTION 14
IN RAVALLI CO. COURTHOUSE
SECTION CORNER OF SECTION 14
IN RAVALLI CO. COURTHOUSE

OWNER(S)

ANNAS R. & NINA MARIE
WOFFORD



IN RAVALLI CO. COURT HOUSE
SECTION CORNER OF ROAD
IN RAVALLI CO. COURT HOUSE

OWNER(S)

ANNAS R. & NINA MARIE
WOFFORD

N 00°40'20"E

N 89°53'46"E
1322.07'

N 89°53'46"E
1322.07'

1317.77'

BITTERROOT BRANCH OF THE BURLINGTON-NORTHERN R.R.

Phil Richards
Pond

Osterbauer
Pond

1385
ACRES

George G. Brown
Property

S 00°35'31"E
1318.89'

SE 1/4 CORNER, SEC. 8

967.17'

1320.20'

1320.20'

N 89°56'42"E, 2640.39'

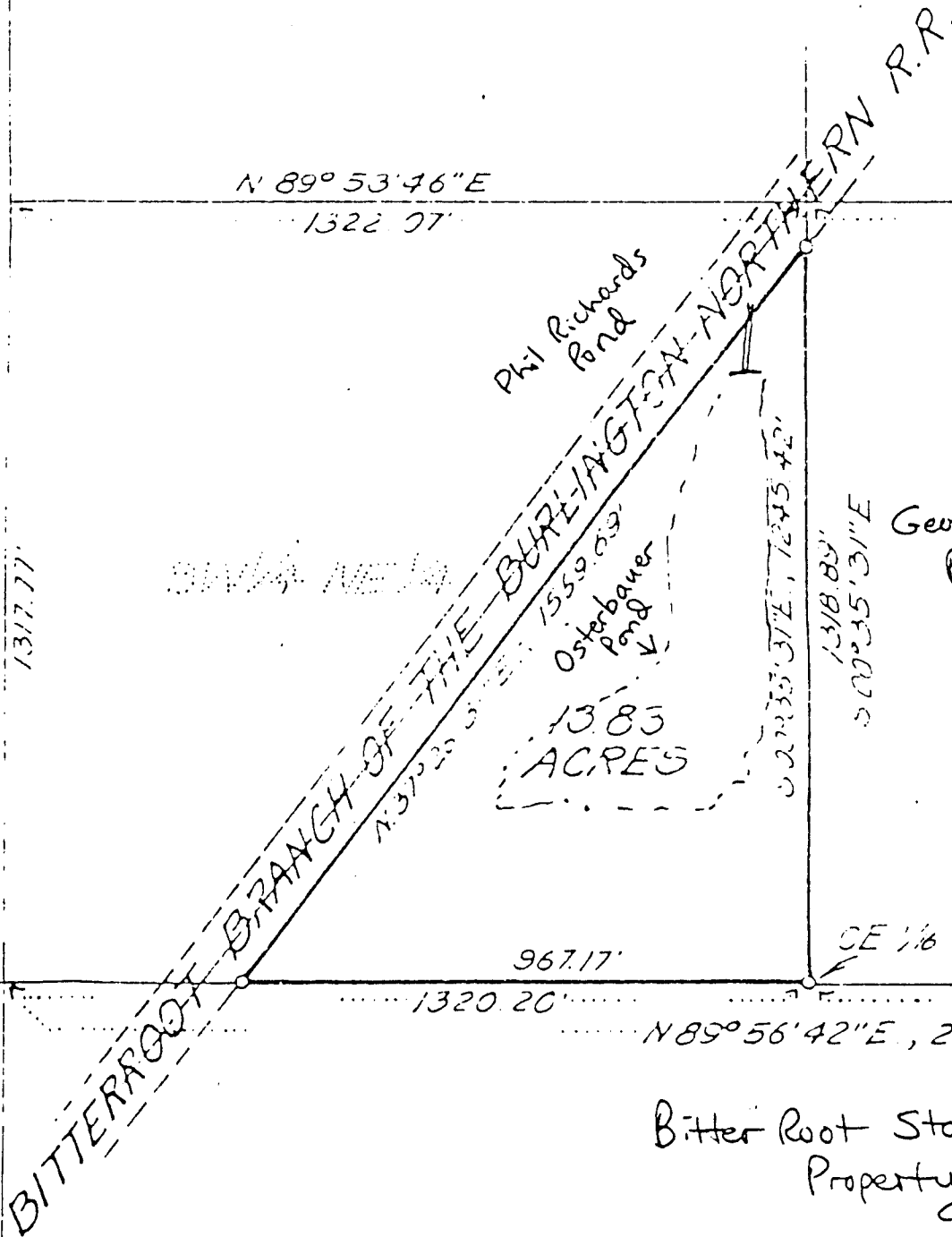
Bitter Root Stock Farm
Property

1/4 CORNER OF SECTION 8
IN RAVALLI CO. COURTHOUSE

SECTION CORNER OF SECTION 8
IN RAVALLI CO. COURTHOUSE

OWNER(S)

ANNAS R. & NINA MARIE
WOFFORD



Amendments to HB 269

Proposed by the Helena Valley Irrigation District

1. Page 3, lines 10, 11, and 12.

Strike: "Travel and other necessary expenses must be approved by a unanimous vote of the board"

2. Page 5, line 24.

Strike: "\$100,000"

Insert: "\$125,000"

3. Page 6, line 1.

Following: "paid"

Insert: "for such purchase, lease, or contract"

4. Page 6, line 14.

Strike: "employ competent engineers to make"

Insert: "provide"

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OF THE IMPOUNDMENT OR PIT IS LESS THAN 15 ACRE-FEET AND the appropriation is from a source other than a perennial flowing stream. ^{SE 59} As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. ^{L14 P2} However, before WITHIN 60 DAYS after constructing the impoundment or

^{L16 P2} pit, the appropriator shall apply for a permit as prescribed by this part. UPON RECEIPT OF A CORRECT AND COMPLETE APPLICATION FOR STOCKWATER

PROVISIONAL PERMIT THE DEPARTMENT SHALL THEN AUTOMATICALLY ISSUE A

PROVISIONAL PERMIT. If the department determines after ^{L17 & L18 P2} processing the

⁷ application A HEARING UNDER 85-2-314 THAT the rights of other appropriators

have been or will be adversely affected, it may ^{L19 - P2} REVOKE THE PERMIT OR

require the applicant ^{L-19 P2} PERMITEE to modify the ^{L-20 P2} construction of the

^{L 20 P2} impoundment or pit and issue MAY THEN MAKE the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(3) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

Section 2. Section 85-2-314, MCA, is amended to read:

"85-2-314. Revocation OR MODIFICATION of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof or if the water is not being applied to the beneficial use contemplated in the permit or if the permit is otherwise not being followed, OR OTHER RIGHTS HAVE BEEN ADVERSELY AFFECTED, the department may, after notice, require the permittee to show cause why the permit should not be revoked OR MODIFIED. If the permittee fails to show sufficient cause, the department may revoke OR MODIFY the permit.

HB 324

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 85-2-306, AND
85-2-314, MCA, TO EXCEPT FROM THE WATER APPROPRIATION PERMIT PROCESS THE
REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN
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OF THE SIZE OF THE IMPOUNDMENT IF THE SOURCE OF WATER IS OTHER THAN A
PERENNIAL FLOWING STREAM, AND ALLOWING FOR A MODIFICATION HEARING IF OTHER
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-306, MCA, is amended to read:

"85-2-306. Exceptions to permit requirements. (1) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well and appropriation of the groundwater for beneficial use, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(2) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if ^{1-9 P2} the maximum capacity of ^{110 P2} the impoundment or pit is less than 15-acre-feet and THE MAXIMUM CAPACITY

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MINUTES OF THE MEETING OF THE SELECT COMMITTEE ON WATER
January 27, 1981

The Select Committee on Water convened at 2 p.m. on January 22, 1981 in Room 436 of the Capitol Building with CHAIRMAN ROTH presiding. All members were present with the exception of VICE CHAIRMAN CURTISS, who was absent, and REP. NEUMAN, who was excused.

HOUSE BILL 269. REP. MC LANE opened the hearing on HB 269, a bill to generally revise the law concerning the administration of irrigation districts. She stated that inflation had prompted her to sponsor the bill.

PROPONENTS:

CHARLES CRANE, Executive Director of the Montana Water Development Association, testified in behalf of the bill. (EXHIBIT I)

RON SCOFIELD, of the Helena Valley Irrigation District, spoke in favor of the bill. He read proposed changes (EXHIBIT II). BOB ELLIS, also of the Helena Valley Irrigation District, testified and referred to page 6, Section 8 of the bill. He stated that the \$5,000 limit was not adequate, as it barely covers the maintenance, which includes construction by the state definition. The Bureau of Reclamation, on all Bureau projects, does all the engineering and planning; it would be a duplication if outside engineers had to be called in. To keep all employees year around, the District prefers to do all the work within their power.

OPPONENTS: None

QUESTIONS:

REP. CONROY asked how often the Water meetings are held. ELLIS replied once a month. REP. CONROY asked how much travel is involved. ELLIS answered that, for federally funded projects, they meet in Billings. For the Missouri River Water Users Association, they sometimes meet with the regional director. They meet upon request, and require travel expenses and 2 or 3 days food and lodging. CONROY asked if they were able to pay for this expense with federal money. ELLIS said yes.

CONROY: Are there any guide lines for spending federal money? RON SCOFIELD commented that there definitely are guidelines. CONROY asked about the salaries for workers on the project and was told by SCOFIELD that they range from \$3.50 to \$9.50 per hour. REP. HUENNEKENS asked for an explanation of Sections 3 and 4 in regard to a Board of Control. Ex-REP. DAY told the committee that a Board of Control run the Buffalo Rapids project and the Lower Yellowstone project. The Board for the Buffalo Rapids is

comprised of six elected members and one member at large, all district representatives. They make up the proposed budget for the various districts. The Lower Yellowstone project operated somewhat differently. Its board is not made up of district representatives, but it operates the same. Members are not paid for travel but receive a per diem pay. REP. KEMMIS asked Mr. Crane why he was liberal in one of his proposed amendments increasing an amount from \$80,000 to \$100,000, yet he was more restrictive in that he wants to require written consent for any expenditure, no matter how small.

REP. CONROY asked Mr. Ellis how many were employed by the Helena Valley District. ELLIS told him there were five and that they were responsible for 15,000 acres. The number of employees of a district depends upon the size of the district. Some have as few as three employees and one employs 25.

REP. MC Lane closed.

REP. ROTH declared the hearing on House Bill 269 closed.

CHAIRMAN ROTH announced that on Tuesday, January 27, House Bill 194 and House Bill 324 will be heard. ROTH then introduced ERVAL RAINEY who presented slides and information on the proposed \$220,000,000 Kootenai River Hydroelectric Project. Mr. Rainey represents Northern Lights Generating and Western Montana Generating and Transmission.

The meeting adjourned at 3 o'clock.



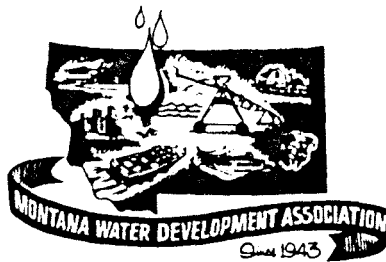
AUDREY ROTH, Chairman

rj

Robert Fagerberg, President
Greenfield Irrig. Dist.
Fairfield, MT 59436

Robert LeProwse, Vice Pres.
Champion Timberlands
Box 8
Milltown, MT 59851

Ed Norlin, Vice Pres.
P.O. Box 571
Terry, MT 59349



D. Keith Williams, Sec.-Treas.
P O Box 2538 - NWRA DIR
Billings, MT 59103

Hubert White, Alt. NWRA DIR
101 Front Street
Townsend, MT 59644

Charles F. Crane, Exec. Dir.
Box 485
Butte, MT 59703

HB 269

This bill is the result of activities undertaken by the irrigation and legislative committees of the Montana Water Development Association. This action was prompted primarily as a result of the deleterious effects of inflation on the administration of the irrigation districts.

The process by which these proposed changes were identified was very much like the one we have here today. A committee consisting of irrigation district managers and directors thoroughly reviewed the existing code and suggested changes. These proposed changes were presented to the other irrigation districts in order to solicit comments and incorporate the changes that each of the districts had felt would be beneficial. I am telling you the background of this bill to emphasize that the changes proposed in this bill have been reviewed by the irrigation districts all over the state and reflect the needs of all of the irrigation districts.

The Montana Water Development Association asks that you support this bill on behalf of the irrigation districts.

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NAME A. H. Ellis BILL No. H/B 269
ADDRESS 1735 Sierra Malibu Mt DATE 1/24/01
WHOM DO YOU REPRESENT Mountain Water Development Ass'n
Malibu Valley Eng
SUPPORT L OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

COMMITTEE

SPONSOR

Date _____

RESIDENCE

REPRESENTING

SUPPORT

OPP

Halena Valley 1869 Dist

Plant water level of new

✓

HELENA MT

HELENA VALLEY
IRRIGATION DISTRICT

✓

SAC/DOJ - 10

Montana	(Sand)
Idaho	

Generation + Transmission

APA - PCLA - SCPA + SCALE

MANHATTAN

Mark Walter Dewberry, Jr.

B. H.

1

GERALDINE, M

WIFE.

Glenelg, Mt.

NPRE

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

EX 1
Exhibits for
Jan. 27, 1981 Water Com. Mtg

HOUSE BILL 324

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL TO EXCEPT THE REQUIREMENT FOR APPLICATION FOR A PERMIT PRIOR TO CONSTRUCTING AN IMPOUNDMENT OR PIT FOR USE BY LIVESTOCK ON A NON-PERENNIAL STREAM

The Department opposes House Bill 324 because it could create unnecessary expense for both existing water users and applicants for new stockponds.

Under existing statutes a water right permit must be applied for but does not have to be issued before constructing a stockpond of less than 15 acre-feet in size on nonperennial streams. This exception was made so that most stockponds could be built without delay and because that class of right normally has little effect on existing water rights. If, upon processing the application, it is found the stockpond harms existing rights the Department can require the structure be modified to correct the damage. The exception has covered about 80 percent of the stockpond applications received since 1973.

About 25 percent of applications for stockponds greater than 15 acre-feet in size receive objections from other water users. That is, a large share of those stockponds over the 15 acre-feet limit may affect existing water rights. Existing statutes allow water users the opportunity to object to these stockponds before they're built. If it is found by the Department that existing rights will be harmed then the application can be denied or, more likely, the dam design altered to require a tube or pipe outlet be placed in the structure so that water can be released to satisfy existing rights downstream. Obviously, taking these actions after the dam is already in place (as allowed by HB 324) would be much more difficult, costly, and time consuming.

In addition, HB 324 would allow the stockpond owner an unspecified amount of time after construction of the dam to apply for a permit. There may be little incentive for the owner to take this step. HB 324 would place a burden on the downstream water user to complain about the stockpond. The stockpond owner would then be forced to apply for a permit, a hearing would probably be held and the owner might be required to retrofit a pipe outlet in the dam of sufficient size so that the downstream right could be protected. Again, taking these actions after the dam is in place (as allowed by HB324) would be much more difficult, costly and time consuming.

UNITED STATES OF AMERICA,)
State of Montana) ss.

I, FRANK MURRAY, Secretary of State of the State of Montana, do hereby certify that the following is a true and correct copy of SENATE Bill No. 76, Chapter No. 697, Montana Session Laws of 1979, enacted by the Forty-sixth Legislature of the State of Montana, approved by Thomas L. Judge, Governor of said State, on the 11th day of May, 1979, and effective Immediately.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the great Seal of said State.

Done at the City of Helena, the Capital of said State, this 17th day of May, 1979.

Frank Murray
Secretary of State

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CHAPTER NO. 697
MONTANA SESSION LAWS 1979
SENATE BILL NO. 76

AN ACT TO ADJUDICATE CLAIMS OF EXISTING WATER RIGHTS IN MONTANA; AMENDING SECTIONS 3-5-111, 85-2-102, 85-2-112, 85-2-113, 85-2-114, 85-2-401, AND 85-2-406, MCA; REPEALING SECTIONS 85-2-201 THROUGH 85-2-210, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose -- district court water divisions -- water judges -- creation. (1) [This act] amends the Montana Water Use Act to expedite and facilitate the adjudication of existing water rights.

(2) To adjudicate existing water rights water divisions are established as defined in [section 2]. A water division shall be presided over by a water judge.

(3) A water judge shall be designated within 30 days after [the effective date of this act] for each water division by a majority vote of a committee composed of the district judge from

SENATE BILL NO. 76

each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. A water judge must be a district judge of a judicial district wholly or partly within the water division. A district judge may not sit as a water judge in more than one division.

(4) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in [section 2] for his division.

(5) A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division.

(6) The jurisdiction of each judicial district concerning the determination and interpretation of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.

Section 2. Water divisions defined. (1) There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(a) The Yellowstone River Basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(b) The lower Missouri River Basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(c) The upper Missouri River Basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(d) The Clark Fork River Basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County.

(2) Whenever a question arises concerning which water judge shall preside over adjudication of a matter concerning the determination and interpretation of existing water rights, the question shall be settled by the water judges involved.

Section 3. Appointment of water masters -- qualifications -- removal. (1) The water judge in each water division shall appoint a water master.

(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.

(3) In appointing a water master, the water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the water judge and may be removed by the water judge.

Section 4. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water

masters. Water masters shall receive expenses as provided in 2-18-501 through 2-18-503.

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in [section 18].

Section 5. Duties of water masters. (1) The water master has the general powers given to a master by M.R.Civ.P., Rule 53(c).

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in [section 22].

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

Section 6. Jurisdiction of the water division. (1) The action for the adjudication of all existing water rights under [this act] is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in [section 16]. As to each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in [section 2] that are considered filed in or transferred to a judicial district wholly or partly within the division.

(3) The water judge may consolidate all matters concerning the determination and interpretation of existing water rights within the water judge's division in any combination or groups of claims or matters for joint hearings or proceedings conducted by the water judge or water master in any location within the division. The water judge may make such consolidations as are necessary to administer the requirements of [this act] in adjudicating claims of existing water rights.

(4) All matters concerning the determination and interpretation of existing water rights shall be brought before or immediately transferred to the water judge in the proper water division unless witnesses have been sworn and testimony has been taken by a district court prior to the date of the Montana supreme court order as provided in [section 16].

(5) The water judge of each water division may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

(6) The water judge of each water division may enforce the

provisions of a final decree issued in that water division as provided in [section 24].

(7) The water judge may designate any other district judge within the water division to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm.

Section 7. Disqualification of water judges or water master.

(1) A water judge may disqualify himself or the water master in any proceeding or pertinent portion thereof in which his or the water master's impartiality might reasonably be questioned.

(2) A water judge may also disqualify himself or the water master in the following circumstances:

(a) if he or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice he or the water master served as a lawyer in the matter in controversy or a lawyer with whom he or the water master previously practiced law served during such association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if he or the water master has served in governmental employment and in such capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if he or the water master knows that he or the water master individually or as a fiduciary, or his or the water master's spouse or minor child residing in his or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if he or the water master or his or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-105) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should inform himself about his and the water master's personal and fiduciary financial interests and make a reasonable effort to inform himself about the personal financial interests of his and the water master's spouse and minor children residing in his or the water master's respective household.

(4) For the purposes of this section, the following definitions apply:

(a) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master or water judge.

(b) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(c) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(iv) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(5) A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification.

(6) The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court.

Section 8. Designation of water judge to fill vacancy. If a vacancy occurs, it shall be filled in the manner provided in [section 1] for the initial designation of a water judge. A vacancy is created when a water judge dies, retires, is not elected to a subsequent term, forfeits his judicial position, is removed, or is otherwise unable to complete his term as a district judge.

Section 9. Water judges -- term of office. The term of office for water judges is from the date of initial appointment as provided in [section 1] to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.

Section 10. Promulgation of rules and prescription of forms. As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with [this act] in consultation with the

water judge and the department.

Section 11. Claim of existing water right -- filing statement of claim required -- exemptions. (1) A person claiming an existing right, unless exempted below or unless an earlier filing date is ordered as provided in [section 16], shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources and claims for rights in the Powder River Basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of subsection (1) of this section. Such claims may, however, be voluntarily filed.

Section 12. Department of fish and game to represent public recreational uses. The department of fish and game shall exclusively represent the public for purposes of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26], provided that the foregoing shall not exclude a federal governmental entity from representing the public for the purpose of establishing any prior and existing public recreational use in existing right determinations under [sections 11 through 26] and further provided that the foregoing shall not be construed in any manner as a legislative determination of whether or not a recreational use sought to be established prior to July 1, 1973, is or was a beneficial use.

Section 13. Statement of claim -- contents. (1) The statement of claim for each right shall include substantially the following:

- (a) the name and mailing address of the claimant;
- (b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;
- (c) the quantities of water and times of use claimed;
- (d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;
- (e) the purpose of use, including, if for irrigation, the number of acres irrigated;
- (f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in

subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The claimant shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

Section 14. Abandonment by failure to file claim. The failure to file a claim of an existing right as required by [section 11] establishes a conclusive presumption of abandonment of that right.

Section 15. Claim to constitute prima facie evidence. A claim of an existing right filed in accordance with [section 11] constitutes prima facie proof of its content until the issuance of a final decree.

Section 16. Order to file claim. (1) The Montana supreme court shall within 10 days of the filing of the petition by the attorney general issue an order to file a statement of a claim of an existing water right in substantially the following form:

"WATER RIGHTS ORDER

FAILURE TO FILE A CLAIM AS REQUIRED BY LAW WILL RESULT IN A CONCLUSIVE PRESUMPTION THAT THE WATER RIGHT OR CLAIMED WATER RIGHT HAS BEEN ABANDONED. (This introductory sentence shall be printed in not less than 12-point boldface type.) This order is notice of commencement of procedures for the general adjudication of existing rights to the use of water and of the requirement to file a claim for certain existing rights to the use of water. Every person, including but not limited to an individual, partnership, association, public or private corporation, city or other municipality, county, state agency or the state of Montana, and federal agency of the United States of America on its own behalf or as trustee for any Indian or Indian tribe, asserting a claim to an existing right to the use of water arising prior to July 1, 1973, is ordered to file a statement of claim to that right with the department no later than June 30, 1983. Claims for stock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources are exempt from this requirement; however, claims for such uses may be voluntarily filed. Claims filed with the department in the Powder River Basin in a declaration filed pursuant to the order of the department of natural resources and conservation or a district court issued pursuant to sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are also exempt.

For further information, contact the department of natural resources and conservation, Helena, Montana, for a copy of the law and an explanation of it."

(2) Upon petition of the attorney general, the Montana supreme court shall issue the order called for in subsection (1) with a shorter claim filing period of not less than 1 year, subject to extension not beyond June 30, 1983, by the Montana supreme court upon petition of the attorney general, in those basins or subbasins where state adjudication jurisdiction is being or is likely to be challenged.

Section 17. How notice of the order to be given. To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

(1) It shall cause the order printed in not less than 10-point type to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in [section 16] and in April of 1980, 1981, 1982, and 1983.

(2) It shall cause the order in writing to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in [section 16].

(3) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by [section 18].

(4) It shall provide copies of the order in writing to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in [section 16], and in April of 1980, 1981, 1982, and 1983.

(5) It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

(6) It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

(7) It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

Section 18. Fees -- special account created. (1) Each claim filed under [section 11] shall be accompanied by a filing fee in the amount of \$40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed \$480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and which is accompanied by a certified copy of that decree or pertinent portion thereof or verified as otherwise ordered by the court.

(2) There is established a water right adjudication account in the earmarked revenue fund of the state treasury. All fees collected under this section and [section 22] shall be deposited in the account to pay the expenses incurred by the state for administering [this act].

Section 19. Expenses to be borne by state. All expenses incurred by the state as a result of [this act] are to be paid from the water right adjudication account in the earmarked revenue fund established in [section 18]. Expenses include but are not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in administering [this act]. If sufficient revenue is not available from the earmarked revenue fund, the expense shall be paid from the state's general fund.

Section 20. Adjudication of existing rights. (1) Within 20 days after [the effective date of this act], the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in [section 11].

(2) The water judge shall monitor the claim filing procedure for claims within his water division and make any orders necessary to assure timely and accurate compliance with the claim filing procedure.

Section 21. Department assistance to water judges. The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division:

(1) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by [section 11];

(3) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

Section 22. Preliminary decree. (1) Within a reasonable time after the close of the filing period, the water judge shall issue

a preliminary decree. The preliminary decree shall be based on the statements of claim before the water judge, the data submitted by the department, and any additional data obtained by the water judge.

(2) The preliminary decree shall contain the information and make the determinations, findings, and conclusions required for the final decree under [section 24].

(3) If the water judge is satisfied that the report of the water master meets the requirements for the preliminary decree set forth in subsections (1) and (2), and is satisfied with the conclusions contained in the report, the water judge shall adopt the report as the preliminary decree. If the water judge is not so satisfied, he may, at his option, recommit the report to the master with instructions, or modify the report and issue the preliminary decree.

(4) The water judge shall send a copy of the preliminary decree to the department, and the water judge shall serve by mail a notice of availability of the preliminary decree to each person who has filed a claim of existing right, or, in the Powder River Basin, to each person who has filed a declaration of an existing right. The water judge shall enclose with the notice an abstract of the disposition of such person's claimed or declared existing right. The notice of availability shall also be served upon those issued or having applied for and not having been denied a beneficial water use permit pursuant to Title 85, chapter 2, part 3, those granted a reservation pursuant to 85-2-316, or other interested persons who request service of the notice from the water judge. The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the preliminary decree. Such certificate shall be conclusive evidence of due and legal notice of entry of decree.

(5) Any person may obtain a copy of the preliminary decree upon payment of a fee of \$20 or the cost of printing, whichever is greater, to the water judge.

Section 23. Hearing on preliminary decree. (1) Upon objection to the preliminary decree by the department, a person named in the preliminary decree, or any other person, for good cause shown, the department or such person is entitled to a hearing thereon before the water judge.

(2) If a hearing is requested, such request must be filed with the water judge within 90 days after notice of entry of the preliminary decree. The water judge may, for good cause shown, extend this time limit an additional 30 days if application for the extension is made within 90 days after notice of entry of the preliminary decree.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions in the preliminary

decree with which the department or person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based.

(4) Upon expiration of the time for filing objections and upon timely receipt of a request for a hearing, the water judge shall notify each party named in the preliminary decree that a hearing has been requested. The water judge shall fix a day when all parties who wish to participate in future proceedings must appear or file a statement. The water judge shall then set a date for a hearing. The water judge may conduct individual or consolidated hearings. A hearing shall be conducted as for other civil actions. At the order of the water judge a hearing may be conducted by the water master, who shall prepare a report of the hearing as provided in M.R.Civ.P., Rule 53(e).

Section 24. Final decree. (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities within the water judge's jurisdiction of persons required by [section 11] to file a claim for an existing right and of persons required to file a declaration of existing rights in the Powder River Basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

- (a) the name and post-office address of the owner of the right;
- (b) the amount of water, rate, and volume, included in the right;
- (c) the date of priority of the right;
- (d) the purpose for which the water included in the right is used;
- (e) the place of use and a description of the land, if any, to which the right is appurtenant;
- (f) the source of the water included in the right;
- (g) the place and means of diversion;
- (h) the inclusive dates during which the water is used each year;
- (i) any other information necessary to fully define the

nature and extent of the right.

Section 25. Appeals from final decree. A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(1) he requested a hearing and appeared and entered objections to the preliminary decree; or

(2) his rights as determined in the preliminary decree were altered as the result of a hearing requested by another person.

Section 26. Certificate of water right. When a final decree is entered, the water judge shall send a copy to the department. The department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the county clerk and recorder of the county where the point of diversion or place of use is located for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

Section 27. Legislative intent regarding Indian water rights -- suspension of adjudication -- negotiation of compacts authorized -- procedure -- negotiation of federal rights. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in [section 16] include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this section in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) From the time of filing the petition required in [section 16] until July 1, 1982, and while negotiations for the conclusion of a compact under this section are being pursued, all actions to generally adjudicate reserved Indian water rights from a source of water in question under [this act] are suspended, unless an action is commenced or is pending by or on behalf of an Indian tribe to adjudicate water from that source other than as provided for in Title 85, chapter 2. In such case, the suspension is maintained only if the action is dismissed or if the parties to the action stipulate to the suspension during compact negotiations of all further proceedings in the action except the determination of jurisdictional issues and an order is so issued.

(3) The compact commission may negotiate with the Indian tribes or their authorized representatives jointly or severally to conclude compacts authorized under subsection (1). Compact

proceedings shall be commenced by the commission. The commission shall serve by certified mail directed to the governing body of each tribe a written request for the initiation of negotiations under [this act] and a request for the designation of an authorized representative of the tribe to conduct compact negotiations. Upon receipt of such written designation from the governing body of a tribe, compact negotiations shall be considered to have commenced. When the compact commission and the Indian tribes or their authorized representatives have agreed to a compact, they shall sign a copy and file an original copy with the department of state of the United States of America and copies with the secretary of state of Montana and with the governing body for the tribe involved. The compact is effective and binding upon all parties upon ratification by the legislature of Montana, any affected tribal governing body, and the congress of the United States. The water judge shall include in the preliminary decree the contents of a compact that has been agreed upon by the parties to the compact whether or not it has been ratified by congress.

(4) (a) There is created a reserved water rights compact commission. Commissioners are appointed within 30 days of [the effective date of this act] as follows:

(i) two members of the house of representatives appointed by the speaker, each from a different political party;

(ii) two members of the senate appointed by the president, each from a different political party;

(iii) four members designated by the governor; and

(iv) one member designated by the attorney general.

(b) Legislative members of the commission are entitled to receive compensation and expenses as provided in 5-2-301 for each day actually spent on commission business. Other members are entitled to salary and expenses as state employees.

(c) The commission is attached to the governor's office for administrative purposes only. The costs of the commission shall be paid from funds appropriated for that purpose from the water right adjudication account established in [section 19].

(d) Members appointed to the commission shall serve until the work of the commission is completed or until they resign or are otherwise unable to serve. A vacancy must be filled in the manner of the original appointment.

(5) The commission or any other party to the negotiations may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of [this act] provided for in subsection (2) shall also terminate.

(6) The compact commission may also enter into separate negotiations with the federal government for the conclusion of compacts concerning the equitable division and apportionment of water between the state and its people and the federal government claiming non-Indian reserved waters within the state. The terms

and conditions of such negotiations shall be the same as provided in this section for negotiations with Indian tribes.

Section 28. Section 3-5-111, MCA, is amended to read:

"3-5-111. District courts presided over by judges of other districts. A judge of the district court of any judicial district may hold the district court in any county of another district than his own at the request of the judge thereof or as otherwise provided by law. Upon the request of the governor, it is his duty to do so. In either case the judge holding the court has the same power either in court or chambers as a judge thereof."

Section 29. Section 85-2-102, MCA, is amended to read:

"85-2-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(6) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(7) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(8) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(9) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(10) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or

group.

(12) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(13) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water and diffuse surface water.

(14) "Water division" means a drainage basin as defined in [section 2].

(15) "Water judge" means a judge as provided for in [sections 1 through 10].

(16) "Water master" means a master as provided for in [sections 1 through 10].

(17) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 30. Section 85-2-112, MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted by the board under 85-2-113;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, declaration, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, declarations, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department or claims of existing rights with a district court under this chapter."

Section 31. Section 85-2-113, MCA, is amended to read:

"85-2-113. Board powers and duties. (1) The board may prescribe fees or service charges for any public service rendered by the department under this chapter, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for any action taken by the department at the request of the water judge or for the issuance of certificates of

existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this chapter. These rules may include but are not limited to rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this chapter to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals and to file reports on appropriations; and

(d) regulate the construction, use, and sealing of wells to prevent the waste, contamination, or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property."

Section 32. Section 85-2-114, MCA, is amended to read:

"85-2-114. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court supervising the distribution of water among appropriators from the source to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take such steps as may be necessary to remedy the waste, unlawful use, or interference.

(2) The department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference."

Section 33. Section 85-2-401, MCA, is amended to read:

"85-2-401. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of

streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this chapter dates from the filing of an application for a permit with the department, except as otherwise provided in 85-2-301 through 85-2-303, 85-2-306, 85-2-310(3), and 85-2-313.

(3) Priority of appropriation perfected before July 1, 1973, shall be determined as provided in part 2 of this chapter."

Section 34. Section 85-2-406, MCA, is amended to read:

"85-2-406. District court supervision of water distribution.

(1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to part 2 of this chapter, any party to the controversy may petition the district court for relief. The district court from which relief is sought may grant such injunctive or other relief which is necessary and appropriate to preserve property rights or the status quo pending the issuance of the final decree.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under part 2 of this chapter shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department. The department shall be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding."

Section 35. Codification. (1) Sections 1 through 10 of this act are intended to be codified as an integral part of Title 3, and the provisions contained in Title 3 apply to this act.

(2) Sections 11 through 27 are intended to be codified as an integral part of Title 85, chapter 2, part 2, and the provisions contained in Title 85, chapter 2, apply to this act.

(3) If the provisions of this act are not codified as stated above, the code commissioner shall add to the MCA, if necessary, statutory language to convey the intent of this section.

Section 36. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in

effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 37. Repealer. Sections 85-2-201 through 85-2-210, MCA, are repealed.

Section 38. Effective date. This act is effective on passage and approval.

The Treasure State

MONTANA MINING ASSOCIATION

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TESTIMONY BEFORE THE SELECT WATER COMMITTEE
MONTANA HOUSE OF REPRESENTATIVES
January 27, 1981
Rm. 437 - 2:00 p.m.

For the record my name is Bill Hand, Executive Secretary
of the Montana Mining Association with offices here in Helena.

The Mining Association chooses to support House Bill 194
as an effort to provide the mining industry with a measure of
water for the processing and treatment of mineral ores.

In spite of the parals, it has confidence in the final
decision of the legislature.

EX-8 18

HOUSE BILL 194

TESTIMONY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT TO MAKE A WATER RESERVATION OR A MODIFICATION OF A RESERVATION
PROVISIONAL AND SUBJECT TO REPEAL OR CHANGE BY THE LEGISLATURE

The Department of Natural Resources and Conservation opposes HB 194 because review of a water reservation would place an unreasonable and unnecessary burden on the legislature.

In reaching their water reservation decision on the Yellowstone River Basin each member of the Board of Natural Resources and Conservation spent more than 200 hours reading and discussing the following documents:

1. A two-volume 697 page draft EIS;
2. A 194-page final EIS;
3. 36 volumes of hearing transcripts; and
4. About 20 proposed orders prepared by the applicants ranging up to 500 pages each.

The information contained in these documents was highly complex, including aspects of Montana water law, background for irrigation requirement, hydrologic data, basis for biological instream flow requirements and various legal considerations.

Sufficient water was reserved in the Yellowstone River Basin to develop 300,000 acres of additional irrigated land, fill four multipurpose reservoirs, provide for municipal needs as well as maintain flows to protect water quality and

recreation. The Board also left unappropriated water in the river to meet the needs of other new water users.

To properly review water reservations would require thousands of hours of legislators' time; time that is a scarce resource during the busy 90-day session. It's simply too much to expect of legislators whose days are already overfull.

The legislature has already provided policy guidance to the Board in making and reviewing water reservations. The 46th Montana Legislature restricted instream reservations to one-half the average annual flow of a river and also clarified the ability of the Board to reallocate instream reservations to other uses. Policies should be established by the legislature while detailed decisions are the role of the Board. If changing conditions require modifications in the water reservations, legislative action isn't necessary. The Board has the authority to make those changes; in fact, they reduced the instream reservation in the upper Yellowstone River so that agricultural reservations would have more water more often.

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TESTIMONY ON HB 194

"AN ACT TO MAKE A WATER RESERVATION OR A MODIFICATION OF A
RESERVATION PROVISIONAL AND SUBJECT TO REPEAL OR CHANGE BY
THE LEGISLATURE"

Jim Flynn, Director
Montana Department of Fish, Wildlife & Parks

January 28, 1981

My name is Jim Flynn; I am the director of the Montana Department of Fish, Wildlife & Parks - I appear in opposition to HB 194. This agency is authorized by law to make reservation of streamflows to maintain and protect fish and wildlife habitat and maintain recreational resources in this state.

Instream reservations are the only tool available to carry out that charge. To use that tool, we, like any other water user, must apply to the Board of Natural Resources & Conservation for a reservation. The amount of water that can be reserved for these purposes is already substantially limited by statute to "...a maximum of 50 percent of the average annual flow of record..." - in other words, only half or less of what is left in Montana streams (85-2-316[5]).

The reservation process is complicated and technical. In the case of the Yellowstone allocation, technicians of various disciplines spent years studying the river and the needs of people in the drainage. Lengthy applications were prepared, and over 36 actual days of adversary hearings were held. The Board of Natural Resources & Conservation then spent 2-1/2 months carefully considering the 30 applications, 3-volume environmental statement, findings of fact submitted by all applicants, and 36 volumes of testimony. The law prohibited any applicant from attempting to influence any board member with any outside communication during this time of deliberation.

The result was a decision based on the merits of the applications, the needs of the applicants, and the obvious necessity for compromise. A comparable decision in a pressure-packed, emotionally charged legislative atmosphere would have been infinitely more difficult - if not impossible.

Any reservation must be periodically reviewed by the Board of Natural Resources & Conservation as required by law (85-2-316[9] MCA). That same board may also reallocate reserved water to other users - again, as provided by law (85-2-316[10] MCA).

HB 194 appears to be an extension of concern about water allocated in the Yellowstone drainage reservation made in December 1978. Since becoming director of Fish, Wildlife & Parks, I have reviewed our water allocation program. That review revealed that since the Yellowstone allocation, our department has agreed to - and in one instance, initiated - modifications of our reservation to accommodate other water users.

A request was made by the city of Billings for a greater reservation and a modification was requested to make more water available for agriculture. The latter modification was initiated by the Department of Fish, Wildlife & Parks. In both cases, water reserved for instream uses was made available for diversionary uses. Legislative review could have complicated and protracted both those efforts.

These modifications are clear evidence that both the Board of Natural Resources & Conservation and the Department of Fish, Wildlife & Parks are dealing responsibly with flow reservations.

Had this bill been law, there would have been two pieces of additional legislation working their way through this legislature. The modifications that are now in effect would have not been finalized until this session. The risk also would exist that they could be lost in the process.

I urge that you let the law work as it is now structured, and impose no additional and unnecessary restrictions on an already complex process.

VISITORS' REGISTER

HOUSE _____ WATER _____ COMMITTEE _____

BILL HB 194

Date 1/27/81

SPONSOR

Ellison

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Villa Hall	Helena	LWU of MT		✓
SHERRI BRCKEMA	MANHATTAN	APA, DCLA, SCPA, SCALA	—	—
BILL ASHER	"	" " " "	—	—
Bill Hand	Helena	Mt. Mng. Assoc	✓	
Franklin Grosfield	Big Timber	Self	✓	
Don Dwy	Boz	dc		
Charlie Grace	Butte	Mt. Mng. Assn	✓	
R. A. Ellis	Helena	Helena Valley Inn	✓	
VIM FLYNN	Helena	DEPT FWP		✓
STEVE MOREHOUSE	HELENA	SEN. MAZUREK		—
Pat Stewart	Helena	Mt. Coal Council		
Pat Wilson	Billings	MontCO		
Pat Eiskane	Helena	MPAC		✓
Gary Fritz	Helena	Mt DNR C		✓
Lew Berry	"	"		✓
John Smith	Boz			✓
JOE LAMSON	HELENA HELENA	MT. DEMOCRATIC PARTY		✓
Beta Garrison	Helena	Water	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Plator

HB 324

COMMITTEE

HB 324

Date 1/27/81

Burnett

Leo BERRY

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

NAME

John Sully

BILL No.

H.R. 194

ADDRESS

3303 Sunnyside Rd

DATE

WHOM DO YOU REPRESENT

SUPPORT

OPPOSE

X

AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME Patricia L. Adams BILL No. 1913 1-4
ADDRESS 111 1/2 S. Meade, Elkhart DATE 1/27/81
WHOM DO YOU REPRESENT Patricia Adams, Elkhart
SUPPORT _____ OPPOSE ☒ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: